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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 90 of
the Commission's Rules
to Clarify and Restrict
the Scope of the Finder's
Preference Program

ORIGINAL

RM-8691

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To: The Commission

**SUPPORT STATEMENT
OF
CENTRAL COMMUNICATIONS AND ELECTRONICS, INC.**

Central Communications and Electronics, Inc. ("Central") by its attorneys, and pursuant to Section 1.403 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") as well as the Commission's invitation¹ respectfully submits its Statement in Support of the Petition for Rulemaking ("Petition") of the Council of Independent Communication Suppliers ("CICS").

I. BACKGROUND AND STATEMENT OF INTEREST

1. Central is organized and operates under the laws of the State of Texas, providing radio equipment as well as telecommunications engineering and technical consulting services to the public. Moreover, through affiliated licensee entities, Central operates telecommunications facilities in northern and central Texas in the Special Mobile Radio ("SMR"), Private Operational Fixed ("POFS") and Commercial Mobile Radio Services. Accordingly, Central and its affiliated companies are vitally interested in any proceeding which may affect the FCC's

¹ Public Notice Report No. 2095 (August 29, 1995).

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policy-making process governing the use of electromagnetic spectrum.

II. SUPPORTING COMMENTS

2. Central agrees that the finder's preference program has served the public interest by expediting the reassignment of channels which are not being used effectively.² Moreover, the program has helped promote the availability of channels to parties who will use them to provide service to the public.³

3. Likewise, while the program has generally proven to be successful, there could be improvement to ensure that finder's preference awards are based upon actual violations of the Commission's construction rules and policies, rather than upon honest mistakes of a ministerial nature.⁴ Accordingly, Central supports the CICS proposal suggesting the adoption of a specific mileage criterion of two (2) miles discrepancy between the licensed coordinates and the actual construction site of any facility against which a finder's preference is requested. This refinement of the finder's preference policy will add a heightened element of certainty to the program and will encourage potential finders to make the considerable effort involved in obtaining a preference when trying to acquire an improperly, used or unused, channel. By limiting the filing of potentially meritless preference requests, the proposed rule change will conserve the Commission's dwindling staff resources. Therefore, Central concludes that CICS's proposal clearly will serve the public interest and the proposal should be adopted at the Commission's earliest opportunity.

² Petition at 2.

³ Petition at 2-3.

⁴ Petition at 3-4.

4. Central also notes that public interest in the CMRS paging facilities operating on 929 MHz and 931 MHz frequency assignments would be better served by an immediate extension of the finder's preference policy, as modified. In order to ensure compliance with its licensing scheme, the Commission has decided to award finder's preferences to entities which discover and report improperly operating or unconstructed facilities. In adopting the program, the Commission found that the award of preferences would, among other things, "help the Commission with its enforcement and compliance activities, facilitate the recovery of underutilized channels, and provide increased incentives for self-policing", as well as improve the accuracy and reliability of the Commission's database.⁵ The Commission found that establishment of a finder's program to further these objectives was warranted because "in many areas of the country it is difficult for new applicants to become licensed or for existing licensees to expand their systems" due to the unavailability of spectrum.⁶

5. Clearly, a finder's preference program would benefit the 929 and 931 MHz paging services since similar conditions of spectrum scarcity are involved. Indeed, Central believes paging spectrum availability is more limited in the SMR and other services to which the finder's preference program already applies. Through informal discussions with Commission staff members, particularly those in the narrowband radio branch, Central has been informed of a backlog of "several thousand" pending applications for paging frequency assignments. The Commission is also attempting to develop a computer software program which will facilitate the

⁵ In re Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, Report and Order, PR Docket No. 90-481, 6 FCC Rcd. 7297 (1991).

⁶ Id.

proper review of and action upon these pending applications. Nevertheless, the staff believes that most of these pending applications will be dismissed due to mutual exclusivity with outstanding grants of authorization or mutual exclusivity with other pending applications.

6. Central is convinced this "applications avalanche" reflects a problem the Commission previously addressed in other services - namely, so-called application mills which overcharge the public for routine application preparation services and flood the Commission with applications by parties who frequently lack the expertise or actual financial resources to construct and operate systems even where such parties may secure an authorization. The Commission previously addressed the problems of application mills in paging as well as other telecommunication services.⁷ Central notes that in at least one instance, the Commission felt compelled to provide a blanket waiver of its construction rules for several applicants in the SMR service where application mills filed applications on behalf of applicants with limited qualifications.⁸ Central is convinced that many of the pending applications at the Commission, as well as a number of current paging license grants which preclude new entrants and/or

⁷ See: e.g. In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services CC Docket No. 92-115, Report and Order, 9 FCC Rcd. 6513 (September 9, 1994); In the Matter of Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing use of the Frequencies in the 2.1 and 2.5 GHz bands Effecting Private Operational-Fixed Microwave Service; Multipoint Distribution Service, Multichannel/Multipoint Channel Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Second Order on Reconsideration, 78 RR 2d 296 (June 21, 1995); Accord Amendment of Parts 21 and 74 of the Commission's Rules with regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order, 78 RR 2d 856 (June 30, 1995). (Statement of Chairman Hundt).

⁸ See: In the Matter of Daniel R. Goodman, Receiver; Dr. Robert Chan Memorandum Opinion and Order, FCC 95-211 (May 24, 1995) ("Hereinafter Goodman/Chan"). In Goodman/Chan the Commission further noted that it previously addressed the problem of speculative applications in the 220 MHz, cellular and other services.

expansion of currently operating systems, are the result of speculative applications filed by application mills on behalf of innocent parties who are unlikely to construct or operate paging systems. Additionally, the current paging licensing standstill means the availability of additional paging spectrum is limited and the public is deprived of adequate paging service. This is particularly harmful to the public in that the Commission's own survey has shown paging to be a fast-growing industry, and the most popular CMRS service.⁹

7. While it is disturbing that the public is vulnerable to application mill operators, those parties victimized have an appropriate forum for remedy of such problems through civil suits as well as action by agencies such as the Federal Trade Commission.¹⁰ Nevertheless, while those victims can obtain relief through such actions, the public remains deprived of adequate paging service choices. Accordingly, Central believes that a tool the Commission can immediately and successfully employ to alleviate the paging spectrum shortage is to apply the proposed finder's preference plan to paging licensees authorized for operation on 929 and 931 MHz spectrum. This policy will allow the public to receive adequate paging services in a timely fashion and will provide an incentive for interested parties to engage in spectrum recovery efforts and to assist the Commission in its enforcement activities. This is all the more critical since budgetary constraints recently have forced the FCC to seriously curtail its enforcement efforts by reducing the number of field operations offices. Central submits that the extension

⁹ See: In the Matter of Implementation of Section 6002 (B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services; First Report; FCC 95-317; (August 18, 1995).

¹⁰ See: FTC v. United Consumer Services et al., CIV No. 1:94-CV-3164-CAM Complaint for Conjunctive and Equitable Relief (N.D. GA., Filed November 28, 1994).

of the finder's preference policy to paging services will offer the Commission a timely, efficient and cost-effective means of policing the paging industry.¹¹

III. CONCLUSION

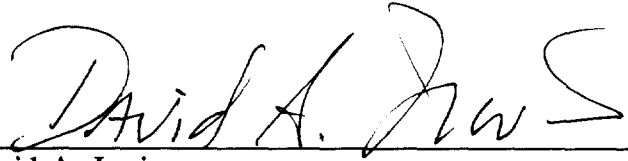
Central supports the Petition of CICS to modify the Commission's finder's preference program to ensure that the program will operate smoothly and equitably. Moreover, Central believes that a crisis currently exists in the paging arena due to application processing problems at the Commission. This problem is compounded by the number of facilities which have been or in the future will be authorized to entities who will be unable to construct and operate the proposed facilities.¹² Accordingly, Central believes that the finder's preference proposal of CICS should be expeditiously adopted and that the provisions adopted should be applied to CMRS paging facilities operating on frequency assignments at 929 MHz and 931 MHz.

WHEREFORE, THE PREMISES CONSIDERED, Central respectfully requests that the Commission adopt and expand the proposed finder's preference plan to paging services and otherwise act in a manner wholly consistent with the foregoing comments.

¹¹ Central understands that the Commission's long range plans may include "block auctions" of paging spectrum with an inherent "finder's preference" right being conferred upon those who prevail in competitive bidding. While this approach conceivably could offer a long-term solution, it is not likely that such a plan could successfully be implemented in the near term. Meanwhile, valuable paging spectrum lies fallow and public demand for paging services increases unabated.

¹² While Central has reviewed the potential for application mill abuse in the paging arena, and has indeed deduced what it believes to be filings by application mills for paging assignments, potential liabilities for civil damages preclude Central from providing full details on such information to the Commission. However, should the Commission through an official inquiry seek to look into the problem of application mill filings in paging services, Central will cooperate with the Commission to the fullest extent possible in such an inquiry.

Respectfully submitted,
CENTRAL COMMUNICATIONS & ELECTRONICS, INC.

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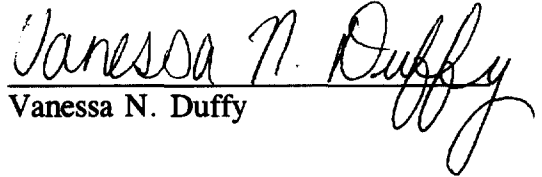
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September 29, 1995

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, a secretary with the law firm of Irwin, Campbell & Tannenwald, P.C., hereby certify that on this 29th day of September, 1995, a copy of the foregoing "Support Statement Of Central Communications And Electronics, Inc." has been served by first-class U.S. mail, postage pre-paid, upon the following:

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